IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

M.F.A.No.769 of 2002

O.P.(M.V).NO.687/1994 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, KALPETTA.

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APPELLANT: PETITIONER:-

T.K. BAVA, S/O. KUNHU, TEKKINIYAKATH HOUSE,
KARPOORAKAD, MEPPADI POST, VYTHIRI TALUK.

BY ADV. SRI.N.J.ANTONY

RESPONDENTS: RESPONDENTS:-

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1. SALIM, S/O. KUNHAPPU, PARAPPURVALAPPIL,
   MAPPILATHOTTAM, MEPPADI POST,
   KOTTAPPADI VILLAGE.

* 2. P. MOOSA, S/O. KUNCHIMUHAMMED,
   PEROOR HOUSE, KONARKAD, MEPPADI P.O.,
   VYTHIRI TALUK (DELETED).

3. THE NEW INDIA ASSURANCE CO.LTD.,
   M.G.T. BUILDINGS, KALPETTA NORTH.

4. SABU. C., S/O. CHACKO, ANNA VILLA,
   CHOORALMALA, VELLURMALA POST, MEPPADI.

5. M.M. VARGHESE, S/O. MATHAI,
   MOOLAMKUNNEL HOUSE, ANAPPARA, PULPALLY.

6. UNITED INDIA INSURANCE CO. LTD., KALPETTA.

*THE NAME OF THE 2ND RESPONDENT IS DELETED FROM PARTY ARRY AT THE RISK OF THE APPELLANT VIDE ORDER DATED 15.02.2007 IN I.A.NO.295 OF 2007.

R3 BY ADV. SRI.P.G.GANAPPAN
R6 BY ADV.SRI.C.V.BIMAL ROY

THIS MISCELLANEOUS FIRST APPEAL HAVING COME UP FOR ADMISSION ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.F.A.No.769 of 2002-A

Dated, this the 1st day of March, 2007

JUDGMENT

Heard. Admitted. Sri.P.G.Ganappan takes notice for the 3rd respondent and Mr.C.V.Bimal Roy for the 6th respondent. 2nd respondent has already been deleted from the party array. The other respondents did not appear in the delay petition. So, I do not find any reason to issue fresh notice to them in the appeal as the vehicles involved in the accident were covered with valid policies of Insurance. So, notice to other respondents is dispensed with and the Miscellaneous First Appeal itself is heard and disposed of.

2. The case of the appellant is that on 27.7.1994, he was travelling in an autorickshaw bearing registration No.KL-12/1150 and at about 9.00 P.M., it reached near Meppadi Primary Health Centre. At that time, the autorickshaw, bearing registration No.KL-12/3484, owned by the 2nd respondent and driven by the 1st respondent came in a rash or negligent manner

from the opposite side and hit against the autorickshaw in which the appellant was travelling, by which he sustained injuries. The accident occurred due to the rash or negligent driving of the autorickshaw by the 1st respondent. The appellant was taken to hospital, admitted and treated as an inpatient. The autorickshaw bearing registration No.KL-12/3484 is covered by a valid policy of insurance issued by the 3rd respondent at the time of accident. Respondents 4 to 6 are the driver, owner and insurer of the vehicle in which the appellant was travelling. So, the appellant claimed an amount of Rs.50,000/- as compensation.

3. The owners and drivers of the vehicle did not appear and contest. The insurer of both the vehicles appeared and contested. The 3rd respondent, which is the insurer of the offending vehicle, filed a counter contending that the allegation that the accident occurred due to the negligence of the 1st respondent was not correct. It was contended that the accident occurred due to the negligent driving of the autorickshaw in which the appellant was travelling. It is admitted that the vehicle bearing registration No.KL-12/3484 was covered with a valid insurance policy. The quantum of compensation is also disputed.

The learned counsel appearing for the insurer of the vehicle in which the appellant was travelling raised a contention that even according to the appellant the accident occurred due to the negligence on the part of the 1st respondent and as such the owner and driver of the vehicle in which the appellant was travelling were not liable. Hence 6th respondent is not liable to pay any compensation. The Tribunal dismissed the petition holding that Exhibit A1 document produced by the appellant shows that the registration number of the offending vehicle which hit against the vehicle in which the appellant was travelling was KL-12/3436 and not KL-12/3484 as contended by the appellant and as such he is not entitled to get any compensation. Challenging that award, this appeal is filed.

4. In the petition, it is specifically averred that the accident occurred due to the rash or negligent driving of the autorickshaw bearing registration No.KL-12/3484 and that vehicle is covered by a valid insurance policy issued by the 3rd respondent. As I already stated, the owner and driver did not contest. The insurer has no case that the number of the vehicle involved was not KL-12/3484, but it was KL-12/3436. In fact, 3rd

respondent admitted the accident, but disputed its liability on the ground that there was no negligence on the part of the driver who drove that vehicle. It is true that in Exhibit A1 F.I.Statement at one place, the number of the offending vehicle was stated as KL-12/3436. But, the document itself shows that at some places it was corrected and written as "3484". A copy of the final report is made available by the counsel for the appellant. It shows that the specific charge against the 1st respondent in the criminal case was that the vehicle bearing registration No.KL-12/3484 driven by him herein hit against an autorickshaw bearing registration No.KL-12/1150 and the accident occurred. The evidence on record shows that the accident occurred due to the negligence of the 1st respondent, who was driving autorickshaw bearing registration No.KL-12/3484. The Tribunal went wrong in dismissing the claim petition solely on the ground that in Exhibit A1 at one place the number of the autorickshaw was wrongly noted as KL-12/3436. It is true that the appellant did not adduce any oral evidence. Exhibit A2 is the scene mahazar and Exhibit A3 is the wound certificate. The description of the place of occurrence shows that the accident occurred due to the

negligence on the part of the driver of vehicle bearing registration No.KL-12/3484. The damages noted with regard to both vehicles also support that fact. So, the material on record shows that the accident occurred due to the negligence of 1st respondent.

5. It is true that the appellant sustained only very minor injuries. He was given First Aid in the Meppadi Primary Health Centre and referred to Government Hospital, Kalpetta for further treatment. What exactly was the treatment given to him in the Government Hospital is not proved in the case. But, considering the facts and circumstances of this case, I am of the view that a reasonable amount can be given to the appellant as compensation.

6. The appellant claimed an amount of Rs.300/- towards transportation to hospital and Rs.500/- towards damage to clothing and articles. Both amounts can be granted. Petitioner has claimed Rs.3,000/- as treatment expenses. I am of the view that an amount of Rs.1,700/- can be awarded on that count. According to me, an amount of Rs.5,000/- can be awarded as compensation for pain and suffering. So, the total compensation payable to the appellant would come to Rs.7,500/-. Since the

offending vehicle is covered with a valid policy of insurance, the third respondent is liable to pay that amount, which carry interest at the rate of 7% per annum from the date of petition.

In the result, the appeal is allowed. An award is passed in favour of the appellant granting a compensation of Rs.7,500/- (Rupees seven thousand and five hundred only) with interest at the rate of 7% per annum from the date of petition. The amount shall be paid within two months from today by the 3rd respondent.

K.Padmanabhan Nair
Judge

vku/-